

AMENDED IN SENATE AUGUST 6, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

AMENDED IN ASSEMBLY MARCH 19, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1680**

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**Introduced by Assembly Member Wieckowski**

February 14, 2012

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An act to amend Sections 1300~~and~~, 1301, 1302, 1304, and 1309 of the Corporations Code, relating to dissenting shareholders' rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 1680, as amended, Wieckowski. Dissenting shareholders' rights.

Existing law, the General Corporation Law, provides for the formation and governance of general corporations, including the rights of shareholders of a corporation who dissent from approving a reorganization or short-form merger. Existing law provides that a holder of dissenting shares, as defined, who complies with certain procedures under specified circumstances is entitled to receive from the corporation the fair market value of the holder's shares, as defined, determined as of the day before the first announcement of the terms of the transaction. Existing law provides that holders of publicly traded shares are only eligible to receive the fair market value of their shares if demands for payment are filed with respect to 5% or more of the class of shares. *Existing law requires that a corporation give specified notice to shareholders of a subsidiary corporation regarding a merger of the subsidiary corporation if all of the corporate shares of the subsidiary corporation are not owned by the parent corporation.*

This bill would provide that the fair market value of dissenting shares ~~that are traded on a national securities exchange certified by the Commissioner of Corporations shall be the most recent closing price per share shall be determined as of the day of, and immediately prior~~ to, the first announcement of the terms of the proposed transaction, subject to adjustment as specified. The bill would eliminate the provision making holders of publicly traded shares only eligible to receive the fair market value of their dissenting shares if 5% or more of the shares are dissenting shares. The bill would make conforming changes.

~~This bill would provide that the fair market value of dissenting shares that are not publicly traded shall be determined as of the day before the first announcement of the terms of the proposed transaction, subject to adjustment, as specified.~~

*The bill would require a dissenting shareholder who demands that the corporation purchase his or her shares to include a statement of what the shareholder claims is the fair market value of those shares and that statement would constitute an offer by the shareholder to sell the shares at that price.*

Existing law defines “dissenting shares” for purposes of these provisions to exclude publicly traded shares, except as specified.

This bill would modify the definition of “dissenting shares” to include publicly traded shares for which the holder is entitled to anything except publicly traded shares of another corporation or cash in lieu of fractional shares, or a combination of those shares and that cash.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1300 of the Corporations Code is  
2     amended to read:  
3     1300. (a) If the approval of the outstanding shares (Section  
4     152) of a corporation is required for a reorganization under  
5     subdivisions (a) and (b) or subdivision (e) or (f) of Section 1201,  
6     each shareholder of the corporation entitled to vote on the  
7     transaction and each shareholder of a subsidiary corporation in a  
8     short-form merger may, by complying with this chapter, require  
9     the corporation in which the shareholder holds shares to purchase  
10    for cash at their fair market value the shares owned by the

1 shareholder which are dissenting shares as defined in subdivision  
2 (b). The fair market value shall be determined as follows:

3 ~~(1) For shares listed on any national securities exchange certified~~  
4 ~~by the commissioner under subdivision (o) of Section 25100, the~~  
5 ~~fair market value shall be the most recent closing price per share~~  
6 ~~(as quoted on the applicable national securities exchange) prior to~~  
7 ~~the first announcement of the terms of the proposed reorganization~~  
8 ~~or short-form merger, as adjusted for any stock split, reverse stock~~  
9 ~~split, or share dividend that becomes effective thereafter.~~

10 ~~(2) For any shares not described in paragraph (1), the fair market~~  
11 ~~value shall be determined as of the day before *as of the day of, and*~~  
12 ~~*immediately prior to*, the first announcement of the terms of the~~  
13 ~~proposed reorganization or short-form merger, excluding any~~  
14 ~~appreciation or depreciation in consequence of the proposed~~  
15 ~~reorganization or short-form merger, as adjusted for any stock~~  
16 ~~split, reverse stock split, or share dividend that becomes effective~~  
17 ~~thereafter.~~

18 (b) As used in this chapter, “dissenting shares” means shares to  
19 which all of the following apply:

20 (1) That were not, immediately prior to the reorganization or  
21 short-form merger, listed on any national securities exchange  
22 certified by the Commissioner of Corporations under subdivision  
23 (o) of Section 25100, and the notice of meeting of shareholders to  
24 act upon the reorganization summarizes this section and Sections  
25 1301, 1302, 1303 and 1304; provided, however, that this provision  
26 does not apply to any shares with respect to which there exists any  
27 restriction on transfer imposed by the corporation or by any law  
28 or regulation; and provided, further, that this provision does not  
29 apply to any shares where the holder of those shares is required,  
30 by the terms of the reorganization or short-form merger, to accept  
31 for the shares anything except: (A) shares of any other corporation,  
32 which shares, at the time the reorganization or short-form merger  
33 is effective, are listed on any national securities exchange certified  
34 by the Commissioner of Corporations under subdivision (o) of  
35 Section 25100; (B) cash in lieu of fractional shares described in  
36 the foregoing subparagraph (A); or (C) any combination of the  
37 shares and cash in lieu of fractional shares described in the  
38 foregoing subparagraphs (A) and (B).

39 (2) That were outstanding on the date for the determination of  
40 shareholders entitled to vote on the reorganization and (A) were

1 not voted in favor of the reorganization or, (B) if described in  
2 paragraph (1), were voted against the reorganization, or were held  
3 of record on the effective date of a short-form merger; provided,  
4 however, that subparagraph (A) rather than subparagraph (B) of  
5 this paragraph applies in any case where the approval required by  
6 Section 1201 is sought by written consent rather than at a meeting.

7 (3) That the dissenting shareholder has demanded that the  
8 corporation purchase at their fair market value, in accordance with  
9 Section 1301.

10 (4) That the dissenting shareholder has submitted for  
11 endorsement, in accordance with Section 1302.

12 (c) As used in this chapter, “dissenting shareholder” means the  
13 recordholder of dissenting shares and includes a transferee of  
14 record.

15 SEC. 2. Section 1301 of the Corporations Code is amended to  
16 read:

17 1301. (a) If, in the case of a reorganization, any shareholders  
18 of a corporation have a right under Section 1300, subject to  
19 compliance with paragraphs (3) and (4) of subdivision (b) thereof,  
20 to require the corporation to purchase their shares for cash, that  
21 corporation shall mail to each of those shareholders a notice of the  
22 approval of the reorganization by its outstanding shares (Section  
23 152) within 10 days after the date of that approval, accompanied  
24 by a copy of Sections 1300, 1302, 1303, and 1304 and this section,  
25 a statement of the price determined by the corporation to represent  
26 the fair market value of the dissenting shares, and a brief  
27 description of the procedure to be followed if the shareholder  
28 desires to exercise the shareholder’s right under those sections.  
29 The statement of price constitutes an offer by the corporation to  
30 purchase at the price stated any dissenting shares as defined in  
31 subdivision (b) of Section 1300, unless they lose their status as  
32 dissenting shares under Section 1309.

33 (b) Any shareholder who has a right to require the corporation  
34 to purchase the shareholder’s shares for cash under Section 1300,  
35 subject to compliance with paragraphs (3) and (4) of subdivision  
36 (b) thereof, and who desires the corporation to purchase shares  
37 shall make written demand upon the corporation for the purchase  
38 of those shares and payment to the shareholder in cash of their fair  
39 market value. The demand is not effective for any purpose unless  
40 it is received by the corporation or any transfer agent thereof (1)

1 in the case of shares described in subdivision (b) of Section 1300,  
2 not later than the date of the shareholders' meeting to vote upon  
3 the reorganization, or (2) in any other case, within 30 days after  
4 the date on which the notice of the approval by the outstanding  
5 shares pursuant to subdivision (a) or the ~~filing~~ notice pursuant to  
6 subdivision ~~(i)~~ (h) of Section 1110 was mailed to the shareholder.

7 (c) The demand shall state the number and class of the shares  
8 held of record by the shareholder which the shareholder demands  
9 that the corporation purchase ~~at and shall contain a statement of~~  
10 *what the shareholder claims to be* the fair market value of those  
11 shares as determined pursuant to subdivision (a) of Section 1300.  
12 *The statement of fair market value constitutes an offer by the*  
13 *shareholder to sell the shares at that price.*

14 *SEC. 3. Section 1302 of the Corporations Code is amended to*  
15 *read:*

16 1302. Within 30 days after the date on which notice of the  
17 approval by the outstanding shares or the notice pursuant to  
18 subdivision ~~(i)~~ (h) of Section 1110 was mailed to the shareholder,  
19 the shareholder shall submit to the corporation at its principal office  
20 or at the office of any transfer agent thereof, (a) if the shares are  
21 certificated securities, the shareholder's certificates representing  
22 any shares which the shareholder demands that the corporation  
23 purchase, to be stamped or endorsed with a statement that the  
24 shares are dissenting shares or to be exchanged for certificates of  
25 appropriate denomination so stamped or endorsed or (b) if the  
26 shares are uncertificated securities, written notice of the number  
27 of shares which the shareholder demands that the corporation  
28 purchase. Upon subsequent transfers of the dissenting shares on  
29 the books of the corporation, the new certificates, initial transaction  
30 statement, and other written statements issued therefor shall bear  
31 a like statement, together with the name of the original dissenting  
32 holder of the shares.

33 *SEC. 4. Section 1304 of the Corporations Code is amended to*  
34 *read:*

35 1304. (a) If the corporation denies that the shares are dissenting  
36 shares, or the corporation and the shareholder fail to agree upon  
37 the fair market value of the shares, then the shareholder demanding  
38 purchase of such shares as dissenting shares or any interested  
39 corporation, within six months after the date on which notice of  
40 the approval by the outstanding shares (Section 152) or notice

1 pursuant to subdivision-~~(i)~~ (h) of Section 1110 was mailed to the  
2 shareholder, but not thereafter, may file a complaint in the superior  
3 court of the proper county praying the court to determine whether  
4 the shares are dissenting shares or the fair market value of the  
5 dissenting shares or both or may intervene in any action pending  
6 on such a complaint.

7 (b) Two or more dissenting shareholders may join as plaintiffs  
8 or be joined as defendants in any such action and two or more such  
9 actions may be consolidated.

10 (c) On the trial of the action, the court shall determine the issues.  
11 If the status of the shares as dissenting shares is in issue, the court  
12 shall first determine that issue. If the fair market value of the  
13 dissenting shares is in issue, the court shall determine, or shall  
14 appoint one or more impartial appraisers to determine, the fair  
15 market value of the shares.

16 *SEC. 5. Section 1309 of the Corporations Code is amended to*  
17 *read:*

18 1309. Dissenting shares lose their status as dissenting shares  
19 and the holders thereof cease to be dissenting shareholders and  
20 cease to be entitled to require the corporation to purchase their  
21 shares upon the happening of any of the following:

22 (a) The corporation abandons the reorganization. Upon  
23 abandonment of the reorganization, the corporation shall pay on  
24 demand to any dissenting shareholder who has initiated proceedings  
25 in good faith under this chapter all necessary expenses incurred in  
26 such proceedings and reasonable attorneys' fees.

27 (b) The shares are transferred prior to their submission for  
28 endorsement in accordance with Section 1302 or are surrendered  
29 for conversion into shares of another class in accordance with the  
30 articles.

31 (c) The dissenting shareholder and the corporation do not agree  
32 upon the status of the shares as dissenting shares or upon the  
33 purchase price of the shares, and neither files a complaint or  
34 intervenes in a pending action as provided in Section 1304, within  
35 six months after the date on which notice of the approval by the  
36 outstanding shares or notice pursuant to subdivision-~~(i)~~ (h) of  
37 Section 1110 was mailed to the shareholder.

- 1 (d) The dissenting shareholder, with the consent of the
- 2 corporation, withdraws the shareholder's demand for purchase of
- 3 the dissenting shares.

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